

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division for Air Quality
(Amended After Comments)

401 KAR 51:240. Cross-State Air Pollution Rule (CSAPR) NO_x annual trading program.

RELATES TO: KRS 224.1-010(8), KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. 97.401- 97.435, 42 U.S.C. 7410

STATUTORY AUTHORITY: KRS 224.10-100(5), 224.20-110, 42 U.S.C. 7410

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) authorizes the cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation establishes the requirements for the control of annual nitrogen oxides (NO_x) emissions from large boilers and turbines used in power plants, pursuant to the Cross-State Air Pollution Rule (CSAPR) NO_x annual trading program, 40 C.F.R. 97.401 through 97.435, Subpart AAAAA for sources located in the Commonwealth of Kentucky. This administrative regulation is not more stringent than the provisions of the federal regulations.

Section 1. Definitions. (1) Except as established in subsection (2) of this section, terms shall have the meaning established in 40 C.F.R. 97.402 and 97.403, as published July 1, 2017.

(2) "Permitting Authority" means:

- (a) For a unit located in Kentucky, the cabinet, as defined by KRS 224.1-010(8); and
- (b) For a unit located outside of the Commonwealth of Kentucky participating in the trading program, "permitting authority" as defined by 40 C.F.R. 97.402.

Section 2. Applicability. This administrative regulation shall apply to CSAPR NO_x Annual units in Kentucky subject to 40 C.F.R. 97.404, as published July 1, 2017.

Section 3. Compliance Requirements. CSAPR NO_x Annual units shall comply with:

- (1) 40 C.F.R. 97.401, Purpose, as published July 1, 2017;
- (2)(a) 40 C.F.R. 97.404, Applicability, as published July 1, 2017; and
- (b) In 40 C.F.R. 97.404(a)(1) and (b), the phrase "in a state (and Indian Country within the borders of such state)" shall be replaced with "in Kentucky".
- (3) 40 C.F.R. 97.405, Retired Unit Exemption, as published July 1, 2017;
- (4) 40 C.F.R. 97.406, Standard Requirements, as published July 1, 2017;
- (5) 40 C.F.R. 97.407, Computation of Time, as published July 1, 2017;
- (6) 40 C.F.R. 97.408, Administrative Appeal Procedures, as published July 1, 2017;
- (7)(a) State NO_x Annual Trading Budgets, New Unit Set-Asides, and Variability Limits for the 2017 control period and thereafter:
 - 1. The NO_x Annual trading budget shall be 77,238 tons;
 - 2. The new unit set-aside shall be 3,090 tons; and
 - 3. The variability limit shall be 13,903 tons; and
- (b) Each Kentucky NO_x Annual trading budget in subparagraph (a)1. of this subsection~~[(a) of this section]~~ shall include any tons in the new unit set-aside but shall not include any tons in the variability limit;
- (8) 40 C.F.R. 97.411(a) through (b)(1) and (c)(1) through (c)(5)(ii), Timing Requirements for CSAPR NO_x Annual Allowance Allocations, as published July 1, 2017;
- (9) 40 C.F.R. 97.412(a), CSAPR NO_x Annual Allowance Allocations to New Units, as published July 1, 2017;

- (10) 40 C.F.R. 97.413, Authorization of Designated Representative and Alternate Designated Representative, as published July 1, 2017;
- (11) 40 C.F.R. 97.414, Responsibilities of Designated Representative and Alternate Designated Representative, as published July 1, 2017;
- (12) 40 C.F.R. 97.415, Changing Designated Representative and Alternate Designated Representative; Changes in Owners and Operators; Changes in Units at the Source, as published July 1, 2017;
- (13) 40 C.F.R. 97.416, Certificate of Representation, as published July 1, 2017;
- (14) 40 C.F.R. 97.417, Objections Concerning Designated Representative and Alternate Designated Representative, as published July 1, 2017;
- (15) 40 C.F.R. 97.418, Delegation by Designated Representative and Alternate Designated Representative, as published July 1, 2017;
- (16) 40 C.F.R. 97.420, Establishment of Compliance Accounts, Assurance Accounts, and General Accounts, as published July 1, 2017;
- (17) 40 C.F.R. 97.421(a) through (g), (i), and (k) through (l), Recordation of CSAPR NO_x Annual Allowance Allocations and Auction Results, as published July 1, 2017;
- (18) 40 C.F.R. 97.422, Submission of CSAPR NO_x Annual Allowance Transfers, as published July 1, 2017;
- (19) 40 C.F.R. 97.423, Recordation of CSAPR **NO_x** Annual Allowance Transfers, as published July 1, 2017;
- (20) 40 C.F.R. 97.424, Compliance with CSAPR NO_x Annual Emissions Limitation, as published July 1, 2017;
- (21) 40 C.F.R. 97.425, Compliance with CSAPR NO_x Annual Assurance Provisions, as published July 1, 2017;
- (22) 40 C.F.R. 97.426, Banking, as published July 1, 2017;
- (23) 40 C.F.R. 97.427, Account Error, as published July 1, 2017;
- (24) 40 C.F.R. 97.428, Administrator's Action on Submissions, as published July 1, 2017;
- (25) 40 C.F.R. 97.430, General Monitoring, Recordkeeping, and Reporting Requirements, as published July 1, 2017;
- (26) 40 C.F.R. 97.431, Initial Monitoring System Certification and Recertification Procedures, as published July 1, 2017;
- (27) 40 C.F.R. 97.432, Monitoring System Out-of-Control Periods, as published July 1, 2017;
- (28) 40 C.F.R. 97.433, Notifications Concerning Monitoring, as published July 1, 2017;
- (29) 40 C.F.R. 97.434, Recordkeeping and Reporting, as published July 1, 2017; and
- (30) 40 C.F.R. 97.435, Petitions for Alternative to Monitoring, Recordkeeping, or Reporting Requirements, as published July 1, 2017.

CHARLES G. SNAVELY, Secretary

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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Christian Ewing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the control of nitrogen oxides (NO_x) emissions from electricity generating units (EGUs) subject to the provisions of the Cross-State Air Pollution Rule (CSAPR) NO_x Annual Trading Program. This administrative regulation will assist in mitigating interstate transport of annual NO_x emissions for downwind states.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to reduce annual NO_x emissions from EGUs. This administrative regulation will assist with implementing the 1997 and 2006 fine particulate matter National Ambient Air Quality Standards (NAAQS) and the 1997 ozone NAAQS. A reduction in annual NO_x emissions will result in other criteria pollutant reductions because NO_x is a precursor to particulate matter and contributes to the formation of ozone. The United States Environmental Protection Agency (US EPA) is requiring states to address the interstate transport of fine particulates and nitrogen oxides in their State Implementation Plans (SIPs).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100(5) authorizes the Energy and Environment Cabinet (Cabinet) to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation reduces annual NO_x emissions from EGUs. This administrative regulation will address Clean Air Act Section 110, requirements for interstate transport. This administrative regulation will be part of the Kentucky SIP.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the administration of KRS 224.10-100(5) by reducing annual NO_x emissions from EGUs, resulting in the protection of human health and the environment. This administrative regulation will address Clean Air Act Section 110, requirements for interstate transport.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment clarifies language to be consistent with federal regulations.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify language for consistency with federal regulations.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statute by providing clarity and consistency for language in federal regulations.

(d) How the amendment will assist in the effective administration of statutes: The amendment clarifies language to be consistent with federal regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. Owners, operators, and designated representatives of stationary, fossil-fuel-fired boilers or stationary, fossil-fuel-fired combustion turbines serving at any time, on or after January 1, 2005, a generator with nameplate capacity of more than 25 Megawatt electrical (MWe) producing electricity for sale, subject to the provisions of the CSAPR NO_x Annual Trading Program will be affected by this administrative regulation. This includes 8 organizations: American Electric Power/Kentucky Power, Eastern Kentucky Power Cooperative, Big Rivers Electric Corporation, Louisville Gas & Electric/Kentucky Utilities, Duke Energy Kentucky, Owensboro Municipal Utilities, Tennessee Valley Authority, and Riverside Generating Company. These organizations represent a total of 78 affected units.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to

take to comply with this administrative regulation or amendment: Regulated entities will have clarification in language that is used in federal regulations.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no additional costs to the regulated entities to comply with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, the sources will have clarity on how to follow state regulations in comparison to related federal regulations.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: The Cabinet will not incur any additional costs for the implementation of this administrative regulation initially.

(b) On a continuing basis: The Cabinet will not incur any additional costs for the implementation of this administrative regulation on a continual basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Cabinet's current operating budget will be used for the implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. No increase in fees or funding is necessary to implement this amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No. The requirements of this administrative regulation apply to stationary, fossil-fuel-fired boilers or stationary, fossil-fuel-fired combustion turbines serving a generator with a nameplate capacity of more than 25 MWe producing electricity for sale.

FISCAL NOTE ON STATE AND LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect any unit, part, or division of state or local government operating a unit subject to the provisions of the Cross-State Air Pollution Rule (CSAPR) Nitrogen Oxide (NO_x) Annual Trading Program. Henderson Municipal Power & Light (HMP&L), owned by the City of Henderson, and Owensboro Municipal Utilities (OMU), owned by the City of Owensboro, operate units affected by this administrative regulation. However, both of the above utilities are already subject to the requirements of this administrative regulation pursuant to the CSAPR FIP.

2. Identify each state or federal statute or federal regulation that requires or authorizes action taken by the administrative regulation.

KRS 224.10-100(5), 224.20-110, 224.20-120, 42 U.S.C. 7410, and 40 C.F.R. Part 97, Subpart AAAAA CSAPR NO_x Annual Trading Program

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The proposed administrative regulation will not generate revenue in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

The proposed administrative regulation will not generate revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? The Energy and Environment Cabinet's (Cabinet) current operating budget will be used to administer this program for the first year. Costs incurred by HMP&L and OMU will not be more than what is already required by the CSAPR Federal Implementation Plan (FIP).

(d) How much will it cost to administer this program for subsequent years? The Cabinet's operating budget will be used to administer this program for subsequent years. Expenditures from HMP&L and OMU will not be more than the costs already required under the CSAPR FIP.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impacts of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

The federal mandate for this administrative regulation is in 40 C.F.R. Part 97, Subpart AAAAA, Cross-State Air Pollution Rule (CSAPR) Nitrogen Oxide (NO_x) Annual Trading Program and Clean Air Act (CAA) Section 110. On July 6, 2011, the United States Environmental Protection Agency (US EPA) issued a Federal Implementation Plan (FIP) for the CSAPR Nitrogen Oxide (NO_x) annual emission budgets for affected units. The Energy and Environment Cabinet (Cabinet) is promulgating this administrative regulation to address CAA Section 110 requirements for interstate transport.

2. State compliance standards. This administrative regulation adopts the federal standards for the control of NO_x emissions from electricity generating units subject to the provisions of the CSAPR NO_x Annual Trading Program.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate requires states to revise their State Implementation Plan (SIP) to reduce the emission of NO_x. Each affected unit will have to hold allocations for the tons of emissions of NO_x for each control period. The NO_x Annual trading budget is 77,238 tons. The new-unit set aside is 3,090 tons and the variability is 13,903 tons. This administrative regulation will reduce annual NO_x emissions from 85,086 tons to 77,238 tons, a reduction of approximately 9 percent.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation establishes the same requirements as the federal CSAPR NO_x Annual Trading Program and will impose no more stringent requirements than those required by the CSAPR FIP.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards or additional or different responsibilities and requirements are not imposed.